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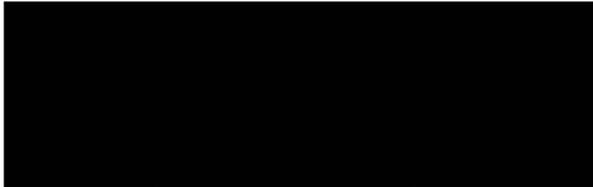
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE:

Office: MOSCOW, RUSSIA

Date: OCT 29 2009

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Field Office Director, Moscow, Russia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Ukraine who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with her husband and child in the United States.

The acting field office director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse. In addition, the acting field office director found that the applicant did not warrant a favorable exercise of discretion because she filed a fabricated asylum claim and failed to appear for her asylum interviews after receiving notice. The acting field office director denied the application accordingly. *Decision of the Acting Field Office Director*, dated May 17, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED], indicating they were married on August 3, 2001; two statements from [REDACTED] a copy of [REDACTED] medical records; letters from [REDACTED] employer, the U.S. Department of Navy; a copy of the applicant's asylum application; two statements from the applicant admitting her asylum application was "not true," "fake," and a "made-up story"; a copy of [REDACTED] naturalization certificate; articles addressing country conditions in Ukraine; copies of tax documents; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(iii) Exceptions.

....

(II) Asylees. - No period of time in which an alien has a bona fide application for asylum pending under section 1158 of this title shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In this case, the record indicates, and the applicant admits, that she entered the United States in April 2000 without inspection. In November 2000, the applicant filed an asylum application claiming that the mafia in Ukraine forced her to work as a prostitute. The applicant married a U.S. citizen in August 2001. In April 2002, during the immigrant visa process, she admitted that her claims in her asylum application were untrue and had been fabricated. The immigration judge permitted the applicant to withdraw her asylum application and granted her voluntary departure. The applicant departed the United States in May 2004.

Although the statute provides for an exception for the period of time during which an alien has a pending asylum application, the asylum application must be a bona fide application. Section 212(a)(9)(B)(iii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iii)(II). In this case, the applicant did not submit a bona fide asylum application. Therefore, the applicant accrued unlawful presence from April 2000 until May 2004. She now seeks admission within ten years of her 2004 departure. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

*Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Court of Appeals for the Ninth Circuit has held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *see also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

In this case, the applicant’s husband, ██████████ states that since his wife and daughter departed the United States, he has suffered tremendously emotionally and physically. He states he has developed high blood pressure and depression, both of which require medication. ██████████ contends he “feel[s] like [he’s] literally losing [his] mind,” and contends his work performance has suffered. ██████████ a military police officer in the US. Navy currently stationed in Sicily, states he has used all of his leave to visit his family and has been the subject of disciplinary proceedings at work due to problems brought on by his family’s separation. ██████████ states that his job is the sole means of support for his family and that if his work performance and health do not improve, he could lose his job. According to ██████████ his U.S. citizen daughter has never lived in the United States and due to his work schedule and the fact that he is deployable, he cannot care for his daughter without his wife’s assistance. ██████████ states he intends on **having his wife and daughter live with him**, wherever he is stationed. *Basis for Appeal from* undated; *Letter from A* ██████████ undated.

The record also contains a copy of [REDACTED] Chronological Record of Medical Care. According to this health record, [REDACTED] began having depressive symptoms on a daily basis within six months of his wife's departure from the United States. The health record indicates that [REDACTED] has no history of psychiatric problems and no family history of psychiatric problems. [REDACTED] reported the following symptoms: depressed mood, easy anger and irritability, anhedonia, social isolation, decreased energy, decreased sleep, and decreased concentration. [REDACTED] also reported being late to work "a few times due to problems waking up once he finally fell asleep." The health record states [REDACTED] was seen by a mental health professional in 2005 and started taking an anti-depressant and a sleep aide. The health record indicates that the medications helped his symptoms, but that [REDACTED] continues having decreased energy, ongoing nervousness with occasional panic symptoms, decreased concentration that causes him to take a long time to complete reports for work, depression, and is easily irritated over small things. The health record concludes that [REDACTED] initial diagnosis of adjustment disorder with anxious mood should be changed to depressive disorder because "the symptoms are majorly impacting his personal and work life." *Health Record, Chronological Record of Medical Care*, dated May 31, 2007, and June 3, 2007.

The record also includes letters from the U.S. Navy. A letter to [REDACTED] from a Commander of the Naval Medical Center indicates that [REDACTED] was placed on thirty days restriction as a result of the "Non-judicial Punishment held on 1 December 2005." *Letter from [REDACTED]* [REDACTED] dated December 1, 2005. A letter from [REDACTED] supervisor states that [REDACTED] "has performed all duties . . . in an exemplary manner and has continued to try to grow professionally despite the severe hardships that accompany separation from his spouse." At the same time, however, [REDACTED] supervisor states that although [REDACTED] "performs well overall, . . . his ability to concentrate on the task at hand is not as good as it could be. [REDACTED] is emotional and quick to anger. His sleep disorder can make him irritable, which added to the concentration issues, makes it difficult for him to complete his assignments in a timely fashion." [REDACTED] supervisor further states that [REDACTED] work schedule has been interrupted by medical visits for his high blood pressure and depression, both of which "stand to cause serious career continuation problems." *Letter from [REDACTED]* dated May 27, 2007; *see also Letter from [REDACTED]*, dated January 12, 2006 (stating that "[a]s a result of [REDACTED] extended separation from his wife and baby daughter, . . . he has experienced significant stress and has been unable to focus effectively on his current assignment.").

In this case, the AAO finds that [REDACTED] has suffered, and will continue to suffer, extreme hardship if the applicant's waiver application were denied. The record shows that as a result of the applicant's departure from the United States, [REDACTED] has been suffering from depression that has escalated to the point of jeopardizing his career as a military police officer in the U.S. Navy. Despite taking a prescription anti-depressant and sleep aide, the record indicates that [REDACTED] continues to suffer from severe depression and a sleep disorder. As his supervisors have observed, [REDACTED] lack of sleep and problems with concentration have affected his ability to complete assignments in a timely fashion and stand to cause serious problems for him in continuing his career. *Letters from [REDACTED]* [REDACTED] and [REDACTED] *supra*. As [REDACTED] states, he literally feels like he is losing his mind and fears he will lose his job as a result of his separation from his family. *Basis for Appeal from [REDACTED]* [REDACTED] *supra*; *Letter from [REDACTED]* *supra*. The record further shows that [REDACTED] is the sole

source of financial support for his family. In addition, the record shows that [REDACTED] had never had high blood pressure prior to his wife's departure. Considering these unique factors cumulatively, the AAO finds that the effect of separation from the applicant on [REDACTED] goes above and beyond the experience that is typical to individuals separated as a result of deportation and rises to the level of extreme hardship.

Moreover, moving to Ukraine to avoid separation would be an extreme hardship for [REDACTED]. The record shows that [REDACTED] is an officer for the U.S. Navy and is subject to being deployed. Mr. [REDACTED] would need to give up his career in the U.S. Navy where he has worked for over ten years since May of 1999. *Biographic Information (Form G-325A)*, undated. Furthermore, the record includes documentation on country conditions in Ukraine and the AAO notes that the most recent U.S. Department of State Country Reports on Human Rights Practices for Ukraine indicates there are "serious human rights concerns" and that "[s]erious corruption persisted in all branches of the government" in Ukraine. *U.S. Department of State, 2008 Country Reports on Human Rights Practices: Ukraine*. In sum, the hardship [REDACTED] would experience if his wife were refused admission is extreme, going well beyond those hardships ordinarily associated with deportation. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez, supra*, at 301. For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299; *see also Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957) (alien bears the burden of proving that positive factors are not outweighed by adverse factors). The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on her behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence

attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives). . . .

*Id.* at 301

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that she merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The AAO finds that the applicant has not met her burden in establishing that a grant of a waiver of inadmissibility is warranted in the exercise of discretion.

The adverse factors in this case are the applicant's entry to the United States without inspection and the applicant's filing of an asylum application she later admitted was entirely fabricated. Specifically, the applicant states:

On advice of my lawyer there was made up a story on order for me to get the asylee status. I never read it, as at that point I didn't know any English. When I met my future husband, he read it and said that we must act according to the true story. Not to violate the American law. My case was given to a different lawyer. All the information in my case about my involvement into prostitution business is not true. I never met people whose names are mentioned there and I never engaged in prostitution.

*Statement by* [REDACTED], undated.

Significantly, although the applicant contends she did not read her asylum application because she did not know English at the time, the applicant does *not* assert that she was unaware of the contents of her asylum application. Even assuming she did not understand the contents of her asylum application, the record indicates that the applicant continued to pursue her asylum claim after learning it was entirely fabricated. According to the applicant's statement, after meeting her future husband, [REDACTED], her case was given to another lawyer. However, in her Motion to Reopen Order of Removal In Absentia, dated January 24, 2002, the applicant's new representative did not withdraw the applicant's asylum application, but rather, indicated that the asylum claim was a "secondary" form of relief. *Motion to Reopen Order of Removal In Absentia*, dated January 24, 2002 ("She will pursue her marriage to a US [citizen] as a primary form of relief. *Her claims for asylum as secondary.*") (emphasis added). The AAO further notes that the applicant has no family ties in the United States other than her husband. In addition, there is no evidence the applicant has a history of stable employment or evidence of value and service to the community.

The favorable and mitigating factors in the present case include: the extreme hardship to the applicant's husband if she were refused admission; letters of support describing the applicant as "the kindest, sweetest person," and a "delightful but serious young woman who [is] very family oriented." *Letter from [REDACTED] and [REDACTED]*; undated; *Letter from [REDACTED] and [REDACTED]* dated November 15, 2003; and the fact that the applicant has not been convicted of any crimes.

After balancing all of the positive and negative factors, the AAO finds that the applicant has not met her burden of establishing that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. The AAO recognizes [REDACTED] will suffer extreme hardship as a result of the denial of the applicant's waiver request and is sympathetic to his situation. However, the applicant has not shown that the grant of relief in the exercise of discretion is warranted. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.